STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-166

October 2, 2001

CENTRAL MAINE POWER COMPANY
Petition to Resolve Dispute Regarding
Special Rate Contract with the Chinet
Company

DECISION AND ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We resolve a dispute between Central Maine Power Company (CMP) and the Chinet Company (Chinet). The dispute involves the parties' attempt, pursuant to 35-A M.R.S.A. § 3204(10), to reform a special rate contract entered into before electric restructuring. We decide that Chinet should pay a total price for electric generation and delivery consistent with its original special rate contract, even if the price of its new electric generation contract is greater than its original special rate contract.

II. BACKGROUND

On August 12, 1996, CMP and Chinet entered into a Customer Service Agreement (CSA) pursuant to which Chinet purchased all of its bundled electrical requirements from CMP. The CSA was implemented pursuant to the pricing flexibility process instituted as part of CMP's 1995 Alternative Rate Plan (ARP).[1] Under its original terms, the CSA was due to expire on December 30, 2001.

With the advent of Maine's electric restructuring law (35-A M.R.S.A. §§ 3201-3217), beginning March 1, 2000, CMP is no longer permitted to provide electric generating services. Recognizing the impossibility that the former electric utilities, now T&D utilities, faced in performing special rate contracts that called for bundled electric service that extended beyond March 1, 2000, the Legislature enacted 35-A M.R.S.A. § 3204(10). Section 3204 (10) directs electric utilities to renegotiate and reform such special rate contracts so that T&D service is "unbundled" from generation service in a way that preserves as nearly as possible the parties' benefits and burdens through the remaining term of the contract. When a customer has diligently obtained generation

[1] Pursuant to the ARP process, CMP submitted the CSA to the Commission in Docket No. 96-600, and the CSA became effective when the Commission found the CSA complied with the ARP criteria and did not suspend the contract from taking effect.

service from a competitive electricity provider, subsection 10 directs the T&D utility to reform the bundled contract to provide a T&D price that is equal to the original contract price minus the price for generation service obtained by the customer. The Commission may not approve a reformed contract T&D price for a term longer than the duration of the customers' retail generation service contract.

On February 29, 2000, Chinet and CMP entered into a reformed CSA, entitled "Amended and Restated Customer Agreement," unbundling the contract price through February 28, 2001, the term of Chinet's first energy supply contract. The Amended and Restated CSA was subsequently amended on July 13, 2000 whereby CMP agreed to further reduce the unbundled transmission and distribution rate because of competitive pressures facing Chinet. The Commission allowed the First Amendment to the Amended and Restated CSA to go into effect in Docket No. 2000-034.

The Amended and Restated CSA required further reformation because Chinet entered into a new power supply arrangement effective on March 1, 2001. On March 5, 2001, CMP filed a petition requesting that the Commission resolve a dispute between Chinet and CMP as to the proper reformed CSA for the remaining 10 months of the contract.

CMP stated that the Company and Chinet had been in discussions since early February 2001 attempting to resolve the proper price for a reformed Amended and Restated CSA. The dispute arises because the price for Chinet's new energy supply arrangement from its competitive electricity provider is higher than the CSA price under either the 1996 original CSA or the July 2000 amended CSA. Thus, Chinet's position is that CMP should pay Chinet the difference between its new generation supply price and the bundled CSA price.[2] CMP disagrees, asserting that such "negative" payments flowing from CMP to CMP's customer are not permitted by § 3204(10). CMP proposes that Chinet pay only the FERC-regulated transmission rates through the remaining term of the CSA and pay nothing for distribution or stranded costs.

III. DECISION

With the passage of the Electric Restructuring Act, 35-A M.R.S.A. §§ 3201-3217, as of March 1, 2000, CMP was prohibited from selling electric energy and capacity (generation service) to retail consumers. 35-A M.R.S.A. § 3205(2). Without additional legislative action, CMP's energy contract with Chinet, a contract for the sale and

[2] The July 2000 (First) amendment to the reformed contract (the Amended and Restated CSA) reduced the unbundled T&D price that Chinet paid to CMP. The Amended and Restated CSA was for a term through February 28, 2001. In CMP's petition, it was unclear whether Chinet believed CMP should pay Chinet an amount to produce a total electricity cost equal to the 1996 CSA bundled price or a reduced bundled price to account for the additional discount CMP granted in July, 2000.

delivery of generation service would have become illegal and thus unenforceable. *Damers v. Trident Fisheries Co.*, 119 Me. 343, 354 (1920).

To address special rate "bundled" contracts for generation and T&D service with terms that extended beyond March 1, 2000, the Legislature enacted 35-A M.R.S.A. § 3204(10) in 1999. Subsection 10 provides:

> 10. Retail contracts for bundled electricity service extending beyond March 1, 2000. If a transmission and distribution utility has entered into a contract to provide bundled electricity service to a retail customer at a price other than the applicable tariffed rate for a term extending beyond March 1, 2000, the utility shall attempt to renegotiate and reform the contract to preserve as nearly as possible the parties' benefits and burdens under the terms of the contract, except that an investor-owned transmission and distribution utility may not agree to provide directly or indirectly generation service to the customer on or after March 1, 2000.
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> The utility shall reform the contract so that the customer pays a total price for delivered electricity on an annual basis during the remaining term of the contract equal to the price contained in the contract. If the customer has exercised due diligence to obtain the lowest price from a competitive electricity provider for generation service for the remaining term of the contract, the utility shall reform the contract to provide a price for transmission and distribution services, stranded costs and all other applicable utility charges that is equal to the difference between the original contract price and the price for generation service obtained by the customer. If the customer has failed to exercise due diligence, the price must be equal to the difference between the original contract price and a reasonable market price for generation service for that customer.
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> If after good faith negotiations the contracting parties are unable to agree to a reformed contract, either party may petition the commission to resolve the dispute. The commission shall determine any unresolved issues and impose a reformed contract to preserve as nearly as possible the parties' benefits and burdens under the terms of the original contract. Prior to its final determination, the commission shall review updated information provided by the retail customer concerning the price of its generating

> service. The commission may not approve a retail contract with a price term longer than the expected duration of the retail customer's generation service contract. Changes to a contract reformed under this subsection take effect on March 1, 2000. A transmission and distribution utility shall ensure that any contract subject to this subsection has been reformed before that date.

35-A M.R.S.A. § 3204(10).

Subsection 10 directs the T&D utility to negotiate and reform bundled contracts with its retail customers in a way that maintains the benefits and burdens of the original contract. So that the T&D utility does not run afoul of § 3205(2), generation service (sale of electric energy) must be obtained from a competitive electricity provider (CEP) and not from the T&D utility.[3] Benefits and burdens are considered maintained when, after the reformation process, the retail customer pays a total price for delivered electricity equal to the original contract price. Thus, the contracts are unbundled first by the retail customer's diligently obtaining generation service from a competitive electricity provider. Then the special contract rate is reformed as a T&D price at the original contract rate minus the generation price. If the T&D utility and retail customer cannot agree on an unbundled contract, either party may petition the Commission, and the Commission will decide unresolved issues and impose a reformed contract, again in a way that preserves as nearly as possible the parties' benefits and burdens under the terms of the original contract.

CMP brings the petition because good faith negotiations have not produced a reformed contract. Chinet has obtained new generation service, effective on March 1, 2001, from a CEP. CMP does not dispute that Chinet's CEP service was diligently obtained. Rather, CMP asserts that the mechanical application of subsection 10 produces an anomalous result that could not be intended by the Legislature. Chinet's new generation price is greater than the original contract rate. The equation stated within subsection 10, original contract rate minus generation price, produces a negative number, or a payment from the utility to the customer. Such a result, in CMP's view, makes no sense and subsection 10 should not be interpreted to permit a T&D price that is a negative number.

CMP cites the principle that statutes must be construed to avoid illogical or absurd results. *Wright v. Town of Kennebunkport*, 1998 Me 184, ¶ 5, 715 A.2d 162, 164. A result whereby the utility pays the customer to take utility service is illogical and

[3] Customers may also obtain generation service from the standard offer, which in limited circumstances, may be provided by the T&D utility. Chinet receives generation from a CEP, so the issue of whether the due diligence standard within § 3204(10) requires service from a CEP rather than from standard offer, is not presented.

absurd, according to CMP, and subsection 10 should be interpreted to avoid such a result.

Chinet asserts that the language of subsection 10 is clear and unambiguous. Subsection 10 requires application of an equation. Only if CMP pays Chinet, Chinet argues, will Chinet receive the benefit of its bargain, bundled electricity at the original price.

CMP counters that subsection 10 is not free of ambiguity. The word to describe what the mathematical formula produces is the "price" for T&D service. CMP asserts that while price is not defined, the term's generally prevailing meaning does not permit a negative number to be a "price." In this case, as the subsection 10 equation does not produce a result that can accurately be described a price for T&D service, the Commission must find another means to reform the original contract.

Subsection 10 reflects a legislative intent that bundled special rate contracts should continue after Electric Restructuring, but on an unbundled basis. We note at the outset that the unbundling of the new generation arrangement from Chinet's CSA is subject to reconciliation by the Stipulation in Phase II-B of CMP's initial T&D rate case (Docket No. 97-580). Thus, the burdens on the T&D utility in this context will be borne directly by ratepayers.

Before restructuring, CMP promised to provide and deliver electricity to Chinet for a firm price. CMP agreed to the CSA because Chinet had a viable alternative to the regular tariff, and CMP decided that the marginal cost of acquiring, from its own generation and from the wholesale market, and delivering electricity would be less than the CSA price, and thus, Chinet would contribute to CMP's fixed costs. Before restructuring, CMP could manage the price risk associated with the CSA by operating its generators and purchasing electricity at wholesale. Restructuring may make it more difficult for CMP to manage the price risk of the CSA, but the price risk has always been on CMP.

Chinet, on the other hand, agreed that it would purchase electricity at the CSA price, even though the wholesale price of electricity might go down. Chinet needed electricity price certainty, so that it could contract to provide paper products at a price that assured the economic viability of the plant. In other words, Chinet entered into contracts to provide paper products in reliance on the stable electricity prices promised by CMP.

CMP and Chinet agree on the "normal" operation of subsection 10. Chinet receives delivered electricity at the CSA price, and the T&D price is determined as a residual matter after subtracting generation. The Chinet CSA operated this way in the first year of restructuring.

For year two, however, generation prices (diligently obtained) have risen to a level higher than the CSA price. CMP argues that interpreting subsection 10 to require a negative T&D price yields an absurd result. In the context of the Chinet CSA, we disagree.

Although the last 10 months of the CSA will produce a negative contribution to CMP's fixed costs, Chinet's contribution to fixed costs over the life of the CSA clearly will be positive. A special rate contract that varies year by year in the amount of contribution is not an absurd or illogical special contract, even if the contribution is negative for some time period, as long as the contract contribution is positive over the long term. In this case, we find that subsection 10 requires Chinet to receive delivered electricity at its CSA price.

The Legislature's use of the word "price" may display an expectation that generation prices would not rise sufficiently to produce a negative T&D price. However, given the overall positive contribution from the Chinet contract, the word "price" used to describe T&D service is not sufficient to cause us to reform the contract in a manner that contradicts the otherwise clear legislative directives of subsection 10. We leave for another day the decision whether subsection 10 must be interpreted to prevent a contract reformation that would over its term produce a net negative contribution to fixed costs.

This case is complicated by the fact that an additional discount was agreed to by CMP subsequent to the date of restructuring. From technical conferences in this case, CMP agreed with Chinet that, provided Chinet's legal argument prevailed, Chinet should be entitled to the discounts granted by the July 2000 contract amendment and not the discount originally granted by the 1996 special rate contract. As there is no dispute between the parties, we order the reformed contract, effective March 1, 2001, to be unbundled using the July 2000 discount rather than the 1996 discount.

At the time the July 2000 amendment was made effective, the Commission stated that reconciliation would be permitted to the March 2000 unbundled price but not the additional discount granted by the July 2000 price. Accordingly, CMP should unbundle the Chinet contract using the July 2000 discount, but defer for future reconciliation using the discount of the original special rate contract.

Accordingly, we

O R D E R

Central Maine Power Company to enter into an amended Customer Service Agreement with Chinet Company, effective March 1, 2000, consistent with this Decision and Order.

Dated at Augusta, Maine, this 2nd day of October 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.